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TAGS: ETRD WTRO USTR
SUBJECT: MAY 2005 MEETING OF THE RULES NEGOTIATING GROUP TO DISCUSS REGIONAL TRADE AGREEMENTS

SUMMARY

¶1. On 17-18 May 2005, the Rules Negotiating Group met to discuss potential clarifications of substantive disciplines of regional trade agreements ("systemic issues") and a draft Chairman's text setting out possible reforms to improve the WTO's review of the agreements ("transparency"). In the context of transparency, the Group held a second discussion of the Secretariat's draft "mock" presentation of a services agreement, to assist Members to envision a possible future format for Secretariat-prepared factual reports of services agreements. The next meetings of the Rules Group dedicated to regional trade agreements were scheduled for 13-14 June and 11-12 July 2005. End Summary.

SYSTEMIC ISSUES

¶2. The meeting began with a formal discussion of two Australian papers on "systemic" issues. (TN/RL/W/173/Rev.1 and TN/RL/W/180) Australia reiterated its four proposed criteria for determining whether free trade agreements and customs unions eliminate duties on "substantially all trade" (SAT) in accordance with GATT rules: (1) a required minimum tariff line coverage (70 percent at date of entry into force and 95 percent at final implementation); (2) a "highly traded products" test (prohibiting exclusion of any product comprising more than 0.2 percent of bilateral trade, or any one of an RTA partners' top 50 exports); (3) consideration of "but for" trade (products that would be traded, "but for" prohibitive tariffs); and (4) a maximum phase-out period of 10 years for duty elimination.

¶3. The Australian papers stimulated good engagement from Members, but there was little explicit support for the details contained within the proposals. Members split on the issue of the ten-year phase-out period, with Costa Rica, Barbados, the United States, and others emphasizing that additional time may sometimes be necessary to ensure comprehensive coverage. Many Members, including China, Egypt, Costa Rica, Malaysia, Barbados, Kenya and Zimbabwe, focused their remarks on concerns over treatment of developing countries, reiterating the need for special and differential treatment.

¶4. The United States cited six additional possible "evaluative criteria" for assessing satisfaction of the substantially all trade requirement. It also voiced concerns about Australia's reliance on 6-digit tariff lines to evaluate percentage coverage, the imposition of a test based upon trade coverage at the time of entry into force, the "highly-traded products" test, and a strict 10-year phase in period, rather than the 15 years that the United States and others have needed to maximize coverage at the time of final implementation.

¶5. Norway, as on previous occasions, took the most overtly negative position, insisting that further elaboration on the complementary obligation to eliminate "other restrictive regulations of commerce" was a precondition for progress on the SAT criterion, based partly on the notion that preferential rules of origin can undermine the SAT test. Switzerland opined that the 95 percent test, in effect, required duty-free treatment for all, not just "substantially all," trade. New Zealand supported Australia's 95 percent tariff line test, but suggested that a single test was not sufficient, and suggested that a minimum percentage of trade flow also should be required. New Zealand and some other Members also supported the 10- year phase-out rule.

¶6. Brazil appreciated the introduction of the "but for" test, but voiced concern about the highly-traded products test, because, for some small countries, such a threshold could effectively cover all trade. In addition, Brazil and India agreed with the United States in questioning Australia's proposed use of 6-digit tariff lines for determining tariff line coverage. Barbados cited international principles of treaty interpretation to oppose Australia's view that regional agreements that had not been specifically notified to the WTO as "interim agreements" were not entitled to be phased in over ten or fifteen years.

¶7. The Rules Group also discussed a paper from the European Communities on systemic issues (TN/RL/W/179). This paper appears to make significant changes in the EC position in a few areas. Notably, for the first time in 30 years, the EC accepts tariff line coverage as one possible criterion for evaluating substantially all trade, in combination with recent trade flow data. The EC paper also states that no subset of regional trade agreements (e.g., Enabling Clause agreements) can, a priori, be excluded from the Rules Group's discussion, and argues that Members should avoid drafting new rules to protect the lowest common denominator, (i.e., those RTAs with the least trade coverage).

¶8. On the issue of a combined average minimum tariff and trade coverage, Switzerland thought the EC submission needed further consideration. Chile and Colombia voiced limited support, but Australia noted that it would tend to facilitate the exclusion of a major sector (such as agriculture). The United States heralded the changes in the EC position on tariff line coverage, agreed with its ambitious aspects, but questioned why an average of tariff line coverage and trade flow coverage was necessarily better than each factor being assessed independently.
¶9. On development, the European Communities claimed there was a "lack of coherence" given that some developing countries had negotiated RTAs under GATT disciplines, while other developing countries, often having larger economies, negotiated their agreements under the Enabling Clause. The EC argued that the size of the economies of the developing country parties, and the potential affect on third parties, should determine whether regional agreements between developing countries should be examined pursuant to GATT Article XXIV or the Enabling Clause. By suggesting "we won't change it if you don't use it," the EC is trying to recruit support of smaller developing countries against the larger developing countries. The EC made an obvious effort to permit its future agreements with the Africa, Caribbean and Pacific countries to be subject to easier disciplines than those that currently apply to agreements between developed and developing countries. Barbados welcomed the EC's proposal to consider different levels of development, but Costa Rica and China rejected it entirely, with Costa Rica arguing that developed countries have a responsibility to insist that developing country RTA partners meet GATT standards. Many delegations were interested in seeing further development of the ideas in the EC paper.
TRANSPARENCY
¶10. The discussion of the Chair's latest draft note on transparency was held in informal mode. In both the general discussion and in the section-by-section discussion, many Members focused on how new transparency rules would address agreements between developing countries notified pursuant to the so-called Enabling Clause, rather than under the GATT disciplines. Chile noted that the discussion concerned transparency rules for Enabling Clause agreements, not a change to the substantive rules. The section-by-section discussion was fairly technical. When addressing what information would be notified, most Members agreed that all data should be provided electronically. The EC caused a stir by asking for the insertion of brackets in the draft text, with respect to the provision of information relating to tariff rate quotas, suggesting that it might not be willing or able to submit such information during an examination conducted by the Committee on Regional Trade Agreements (CRTA). The Chair concluded the discussion by reminding the delegates that the Note was a work in progress and by noting that he hoped to have a revision ready by the June 2005 meeting.
¶11. The Rules Group also discussed the Secretariat's Mock Presentation of a services agreement, which attempted to demonstrate how the Secretariat might undertake new responsibilities in the CRTA examination under the transparency reforms contemplated in the Chair's Note. Introductory remarks noted the difficulty in obtaining data on trade in services, and a request was made (and supported by many Members) for a representative of the WTO's statistics bureau to attend the next meeting to discuss services statistics.
¶12. A few Members, including Chile, noted that it was not possible in every instance to rely on current voluntary classification tools, such as the UN CPC and the WTO Secretariat's W/120, when examining coverage in services

agreements. Most services agreements apply a negative list approach (all services sectors covered, unless specifically exempted) and the parties may choose to use domestic Classifications or one of the parties may use the CPC. Hong Kong China insisted that some kind of standard form should be used for analyzing coverage for all agreements, so that there could be "comparability" between agreements. The United States and Canada noted that comparability was not the appropriate reference for the determination of compliance of services agreements with WTO requirements. Moreover, if an agreement had not been negotiated pursuant to a different format, it would be distortive for the Secretariat to try to fit a square peg in a round hole. Canada

recalled that Members are required to examine RTAs in accordance with GATS Article V, not against commitments under the GATT. The United States reiterated the purpose of the Secretariat presentation is to provide further transparency concerning what is contained in the agreements, not to engage in judgment calls. Malaysia ventured to suggest that this discussion should preliminarily be taking place in the Council for Trade in Services. The United States expressed appreciation for the Secretariat's ability to remain factual and objective in most

parts of the draft, but also pointed out examples of where that may not have been the case. The United States recalled difficulties highlighted by the Secretariat with the use of the available classification tools and the need for Members to assist the Secretariat by supplying data and information on their

domestic services regimes. Deily